IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 272 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANORMA SARABHAI TRUST NO.7 - Applicant(s)
Versus
COMMISSIONER OF INCOME-TAX - Respondent(s)

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Appearance :
MR RK PATEL for Applicant(s) : 1,
MR MANISH R BHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 26/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following two questions under section 256(1) of the Income Tax Act,1961.

> “At the instance of the assessee.
>
> Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the assessee was not entitled to exemption u/s 47(vii) of the Income Tax Act,1961?
>
> At the instance of the Department.
>
> Whether, the Appellate Tribunal is right in law and on facts in holding that when the assessee received shares, debentures and bonds of amalgamated companies, there was no transfer under

section 2(47) of the Income Tax Act and consequently no capital gains tax could be charged ?”

2 Heard Mr.R.K.Patel learned Advocate for the assessee and Mr.M.R.Bhatt, learned Senior Standing Counsel for the revenue. It is common ground between the parties that the reference ought not to be answered in light of the facts and circumstances of the case considering that the assessee herein is a shareholder of the same company in which, in case of other shareholders, the reference has been left unanswered because of the stand taken by the revenue.

3 Therefore, in light of the decision of this Court as recorded in case of *CIT Vs. Leena Sarabhai (N.CH) (1996) 221 ITR 520,* the reference is left unanswered and stands disposed of accordingly. There shall be no order as to costs.

Sd/- Sd/-
(D.A.Mehta,J) (H.N.Devani,J)

m.m.bhatt